IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 108 of 2007 (S/B)

Date of decision: 12th June, 2007

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 12.6.2007. Initials of Judge

Not: Bench Reader will attach this at the top of first page of the judgment when it is put before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 108 of 2007 (S/B)

Ashutosh Bhandari s/o Sri Bachan Singh Bhandari,
R/o Principal, Government Inter College,
Uttarkashi …….. Petitioner

Versus

1. Secretary, School Education,
   Government of Uttarakhand, Dehradun.
2. Additional Secretary/ Director School Education,
   Government of Uttarakhand, Dehradun.
3. District Education Officer, Uttarkashi.
4. District Magistrate/Chairman TLE Purchase Committee,
   Uttarkashi …… Respondents

……

Sri S.N. Babulkar, Senior Counsel with Sri Ravi Babulkar, Advocate for the petitioner.
Sri Subhash Upadhyaya, Brief Holder for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

Sri S.N. Babulkar, Senior Counsel with Sri Ravi Babulkar, Advocate for the petitioner.

Sri Subhash Upadhyaya, Brief Holder for the respondents.

They are heard on admission.

2. Petitioner Ashutosh Bhandari has filed this writ petition for the following reliefs:

> "a. Issue a writ, rule, order or directions in the nature of Certiorari calling for the records and quashing the impugned order dated 23.05.2007 (Annexure-8) passed by respondent no. 1.
>
> b. Issue any other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case.
>
> c. Award cost of the petition in favour of the petitioner."

3. The petitioner, in substance, is challenging the impugned order dated 23.05.2007 (Annexure 8), whereby the petitioner has been placed under suspension.

4. Sri Subhash Upadhyaya, the learned Brief Holder has raised a preliminary objection about the maintainability of the writ petition on the ground that the petitioner has an alternative efficatious remedy of filing a claim petition before the Public Services Tribunal.

5. Sri S.N. Babulkar, the learned Senior Counsel for the petitioner, submits that as the Public Services Tribunal has no power to grant interim relief in the matter of suspension, the alterative remedy of filing a claim petition before the Public Services Tribunal is not efficatious in the present case.

6. The Apex Court, while considering the similar submission, in the case of **Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others Vs. Sahngoo Ram Arya and another** reported in **(2002) 5 SCC 521** observed in paras 11 and 12:

> "11. These appeals are preferred against the order made by the High Court of Judicature at Allahabad in Civil Misc. WP No. 47130 of 2000 etc. on 1-2-2001. A Division Bench of the High Court of Allahabad by the impugned judgment has held that the petitioner in the said writ petitions has an alternative remedy by way of petitions before the U.P. Public Services Tribunal(the Tribunal), and had permitted the writ petitioner therein to approach the Tribunal and directed the Tribunal to entertain any such petition to be filed by the writ petitioner without raising any objection as to Limitation. There was a further direction to the Tribunal to decide the matter expeditiously.
>
> 12. Mr. Sunil Gupta, the learned counsel appearing for the petitioner contended that the remedy before the Tribunal under the U.P. Public Services (Tribunals) Act is wholly illusory inasmuch as the Tribunal has no power to grant an interim order. Therefore, he contends that the High Court ought not to have relegated the petitioner to a fresh proceeding before the said Tribunal. We do not agree with these arguments of the learned counsel. When the statue has provided for the constitution of a Tribunal for adjudicating the disputes of a government servant, the fact that the Tribunal has no authority

> to grant an interim order is no ground to bypass the said Tribunal. In an appropriate case after entertaining the petitions by an aggrieved party if the Tribunal declines an interim order on the ground that it has no such power then it is possible that such aggrieved party can seek remedy under Article 226 of the Constitution, but that is no ground to bypass the said Tribunal in the first instance itself. Having perused the impugned order, we find no infirmity whatsoever in the said order and the High Court was justified in directing the petitioner to approach the Tribunal. In the said view of the matter, the appeals are dismissed. No costs."

7. Thus, from the above dictum of the Apex Court, it is crystal clear that even in those cases where the Public Services Tribunal has no power to grant interim relief, the petitioner is bound to approach the Public Services Tribunal at the first instance and in the event of the refusal by the Tribunal to grant interim relief on the ground that it has no power to grant interim relief, the remedy available to the petitioner, in that situation, would be to file a petition under Article 226 of the Constitution of India for grant of such interim relief, but in no case the petitioner can be allowed to bypass the Public Services Tribunal.

8. For the foregoing reasons, the writ petition is liable to be dismissed on the ground of the availability of the alternative efficacious remedy of filing a claim petition before the Public Services Tribunal.

9. The writ petition, therefore, is dismissed.

(J.C.S. Rawat, J.) 12.06.2007

(Rajeev Gupta, C. J.) 12.06.2007

A